

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0089/2006

24.3.2006

REPORT

on the Commission's 21st and 22nd Annual reports on monitoring the
application of Community law (2003 and 2004)
(2005/2150(INI))

Committee on Legal Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the Commission's 21st and 22nd annual reports on monitoring the application of community law (2003 and 2004)
(2005/2150(INI))**

The European Parliament,

- having regard to the Commission's 21st and 22nd annual reports (COM(2004)0839 and COM(2005)0570),
 - having regard to the Commission's staff working papers (SEC(2004)1638 and SEC(2005)1446 and 1447),
 - having regard to Rules 45 and 112(2) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Petitions (A6-0089/2006),
- A. whereas the Commission's annual reports establish the state of transposition of directives by the Member States in order to ensure that the application of legislation is efficiently monitored; whereas according to the 21st report, 3,927 infringement cases were ongoing on 31 December 2003, including 1,855 cases for which proceedings had commenced, 999 cases for which a reasoned opinion had been issued, 411 cases which had been referred to the Court of Justice and only 69 cases (of which 40 concerned the environmental sector) for which Article 228 proceedings had begun,
- B. whereas proper monitoring of the application of Community law does not consist merely of assessing transposition in quantitative terms but also of evaluating the quality of transposition and of the practices adopted in actually applying Community law,
- C. whereas correct and swift implementation of European legislation is an integral and essential part of “better regulation”; whereas clear and well-written legislation is an indispensable condition for the good application of Community law all over the EU; whereas the quality of legislation and the clarity of obligations for Member States are not always satisfactory owing to the fact that the legislation is often the result of difficult political compromises,
- D. whereas the Commission may adapt the means it uses to carry out its mission effectively and make innovations designed to improve the application of Community law,
- E. whereas the Commission is currently working on the adaptation of existing procedures and on ways of making them faster and more efficient; however, this is not sufficient reason for not transmitting on time the information requested as to the total number of resources allocated to infringements in the relevant Directorates General and the General Secretariat,
- F. whereas the number of complaints relating to infringements of Community law shows that European citizens play a vital role in the application of Community law, and that the

capability properly to address their concerns is important for the credibility of the European Union,

- G. whereas citizens' complaints are not just symbolic in building a 'people's Europe' but constitute a cost-effective and efficient tool for monitoring the application of Community law,
 - H. whereas effective legal protection and uniform application and interpretation are essential elements of Community law,
 - I. whereas it received the Commission's 22nd annual report only in January 2006 and that because of this consistent delay only partial reference to the 2004 report will be made in the present motion for resolution, the core analysis being of the Commission's 21st annual report dealing with the application of Community law in 2003,
-
- 1. Is convinced of the real need for all European institutions to give serious, visible consideration and more convinced priority to the question of monitoring implementation, especially in view of the emphasis which has latterly been put on the alleged urgency of diminishing the amount of EU legislation and legislative initiatives;
 - 2. Insists that any reduction in the amount of legislation must be off-set by more emphasis on implementation; stresses that complaints are a cost-effective and efficient tool for monitoring the application of Community law and calls on the Commission to make sure that at least some of the resources previously attributed to the drafting and follow-up of legislation are dedicated to the effective and correct implementation of existing European legislation in the various units dealing with individual complaints and infringement cases;
 - 3. Is convinced that Parliament's committees should also pay attention to the issue of the application of Community legislation, and in particular that the rapporteur responsible should play a more active role in monitoring the implementation of Community legislation in the Member States, whereby the regular sessions on implementation organised by the ENVI Committee can serve as an example;
 - 4. Understands that comitology is not the subject of this resolution and maintains that the matter accordingly needs to be dealt with in a separate resolution;
 - 5. Stresses that Article 211 TEC assigns to the Commission institutional responsibility for ensuring the application of the provisions of the Treaty and of the measures taken by the institutions pursuant thereto and that Article 226 TEC empowers the Commission to take action against Member States for any failure to fulfil their obligations under the Treaty;
 - 6. Notes that the main problems with the infringement procedure (Articles 226 and 228 TEC) are its length (54 months in average since the registration of the complaint and the referral to the Court) and the limited use of Article 228;
 - 7. Notes that the Commission organises four meetings a year to decide on infringement procedures and that all decisions (from the first letter of formal notice, aimed at getting

information from the Member State, to the decision to seise the Court of Justice) are taken by the College of Commissioners; whilst appreciating the relevance and the need for collective intervention for the infringement phases, proposes that the internal procedure be shortened by empowering each Member of the Commission to send letters of formal notice to the Member States within the field of his or her responsibility where a Member State has not transposed Community law into its national legislation within the set deadline;

8. Notes the insufficient level of cooperation of the national courts in most Member States, which are still reluctant to apply the principle of the primacy of Community law;
9. Welcomes the Commission's Communication "Better Monitoring of the application of Community law" (COM (2002)0725), which sets out various actions to achieve its aim;
10. Regrets nevertheless that the Commission has not presented any structured, detailed follow-up to some of the commitments announced in the above-mentioned Communications, such as "the application of the priority criteria will be assessed annually, when the report on the monitoring of the application of Community law is discussed"(COM(2002)0725, p. 12);
11. Calls on the Commission to conduct a specific evaluation of the application of the priority criteria listed in the above-mentioned Communication, with the aim of assessing whether such an exercise is really needed and does not risk reducing excessively the scope of infringement procedures, for which the Treaty does not provide any hierarchy; calls on the Commission to evaluate whether a simple increase in the available resources in the most exposed Directorates General would not be a preferable solution to improve the capacity to follow-up complaints; points out that legal experts are needed in the Commission departments responsible for transposition to analyse whether legislation has been transposed in all its complexity; notes that it is not possible to rely solely on an automatic concordance system to analyse transpositions;
12. Calls on the Commission to keep Parliament informed of the results of such evaluations; insists that the definition of priorities should not lead to a decreased response to citizens' complaints and urges the Commission to consult Parliament on any possible change in the priority criteria;
13. Calls on the Commission to place the principle of the rule of law and citizens' experience above purely economic criteria and evaluations; urges the Commission to monitor carefully the respect of the fundamental freedoms and general principles of the Treaty as well as the respect of regulations and framework directives; invites the Commission to use secondary legislation as a criterion for determining whether there has been an infringement of fundamental freedoms;
14. Urges the Commission to re-evaluate cooperation with the Member States within the meaning of Article 10 TEC, in light of the fact that most Member States are not prepared to do much to improve the implementation of EU law as was confirmed during the negotiations on the last Better Regulation Interinstitutional Agreement in 2003, when the Council refused any commitment in matters concerning transposition and implementation;

declares its support for re-opening negotiations with the Council on this issue, with a view to amending the Interinstitutional Agreement;

15. Calls on the Commission seriously to reassess its indulgence of Member States when it comes to the deadlines for submitting requested information to the Commission, adopting and communicating national implementing measures and correctly applying Community legislation at national, regional and local levels;
16. Notes that the Member States have decided to set up specific structures dealing with implementation; welcomes the Commission's efforts in supporting the setting-up of appropriate coordination points in each Member State, with the aim of improving the whole transposition and implementation policy and the efficiency of the pre-litigation stage of infringement proceedings; suggests that the Member States should not only establish technical structures, but also appoint political figure(s) responsible at national level for infringement policy;
17. Points out that emphasis on organisational issues and communication flows should not hide the fact that many cases of incorrect implementation are the result of bad quality of legislation and reflect Member States' deliberate efforts to undermine Community legislation for political, administrative and economic reasons; in this connection, notes that the Commission is in the habit of accepting late intervention by the Member States in order to close infringement proceedings; calls on the Commission to ask the Member States to guarantee retroactive application of the Community provisions which have been infringed, in order to remove all effects of the infringement, with an immediate recourse to Article 228 TEC in the event of persistent failure to comply;
18. Notes that the SOLVIT network has proved its effectiveness in the Internal Market as a complementary non-judicial mechanism which has increased voluntary cooperation among Member States, but considers that such mechanisms should not be regarded as a substitute for infringement proceedings which are designed to oblige the Member States to apply Community legislation; calls on the Member States to make allocate greater human and financial resources to their national contact points for the SOLVIT network;
19. Is convinced that while it is important to devote time and effort to developing dialogue with Member States and improving the assistance to them in order to facilitate swift, correct transposition of European legislation, tighter discipline is necessary, notably after enlargement, in order to avoid excessive delays and persistent differences in the quality of national transposition;
20. Believes that a specific clause obliging Member States to draft a concordance table when transposing EU Directives should be inserted systematically into each newly adopted Directive;
21. Notes that in 2004 about 41% of new directives included provision for a concordance table; believes that the European Parliament, as co-legislator, should support proposals to introduce into directives, provisions obliging the Member States to use the concordance

table for notification; calls on the Commission to report to Parliament regularly on the application of such provisions;

22. Welcomes the effort made by some Directorates General of the Commission – and notably DG Environment- to improve the conformity checks on the relevant directives in particular post enlargement; calls on the Commission to publish on its website the studies requested by the various Directorates General on the evaluation of the conformity of national implementation measures with Community legislation;
23. Notes that there are several procedures opened for non-conformity and that such procedures are sometimes repeated without attaining the objective of convincing the Member States to modify their transposition acts; stresses that in such cases delays in the procedure can be highly detrimental to citizens, because the focus is not on individual cases but rather reflects a general problem; calls therefore on the Commission to take a tough stance on cases of non-communication and non-conformity of national implementing measures with Community legislation and to move through the various stages of the Article 226 EC procedure according to fixed, non-negotiable deadlines, laid down in appropriate soft-law instruments (communications, guidelines), in order to arrive at Article 228 EC fines as soon as possible;
24. Invites the Commission to present a list of those directives which have the worst record in terms of their implementation and to explain what it considers the underlying reasons for this to be; points out that, under the case law of the Court of Justice and Article 10 of the EC Treaty, the Member States are required to ensure that an adequate system is in place for effective and proportionate sanctions, to act as a deterrent against infringement of Community provisions; considers that failure to adopt an effective system of sanctions should be pursued with due severity under the infringement procedure;
25. Notes that the present procedures give citizens no rights beyond lodging a complaint and that the Commission, in its role as guardian of the Treaty, has a broad discretion as to whether to register a complaint and start proceedings; considers that there is nothing in the Treaty or the case law of the Court of Justice to prevent the use of appropriate legislative instruments to give further rights to complainants and calls therefore on the Commission to take steps to adopt such instruments; is convinced that this important and exclusive prerogative should correspond to a duty of transparency and accountability as to the reasons why decisions are taken, notably not to pursue complaints;
26. Welcomes the Commission's Communication to the European Parliament and the European Ombudsman on "Relations with the complainant in respect of infringements of Community law" (COM (2002)0141);
27. Urges the Commission to respect the principles stated in that Communication to the effect that all complaints likely to denounce a real violation of the Community law received by the Commission should be registered, without any selection, unless they come under the exceptional circumstances referred to in Article 3; notes that the European Ombudsman has recently received specific complaints denouncing the non-registration of complaints and is currently investigating them; calls on the Commission to submit a regular report to

Parliament on cases of non-registration of complaints in line with the above-mentioned Communication;

28. Notes that the deadline of one year laid down in the Communication between the registration of a complaint and the actual sending of a letter of formal notice or the decision to file the case is too long; notes furthermore that this deadline is not always met, leaving the complainant in a state of unacceptable uncertainty; calls therefore on the Commission to send letters of formal notice, which do not imply any "negotiations" yet with the Member States, within a short period of the registration of the complaint and to strive to move ahead quickly with the procedure on the basis of prompt deadlines from which exemption is possible only in exceptional cases;
29. Urges all services of the Commission to keep complainants - and where appropriate also the MEP involved - fully informed of the progress of their complaints at the expiry of each pre-defined deadline (letter of formal notice, reasoned opinion, referral to the Court), to provide reasons for their decisions and communicate them in full detail to the complainant according to the principles stated in its Communication of 2002, which should allow the complainant to make further observations (such information should include, notably in the cases in which the Commission envisages shelving the complaint, the arguments presented by the Member State involved);
30. Calls on the Commission to adopt a specific procedure which would allow the complainant and the MEP involved to have access to the documentation and to the substance of the correspondence exchanged with the Member;
31. Calls on the Commission to provide specific data on respect for deadlines as set out in its internal Manual of Operational Procedures, which could only be obtained informally; reiterates the importance of setting deadlines from the date of registration of a complaint for providing the complainant with an answer and for sending out a letter of formal notice;
32. Notes that, since their inception, proceedings under Article 228 TEC have led to judgments of the Court of Justice in only three cases; welcomes the Commission's Communication on the Application of Article 228 of the EC Treaty (SEC (2005)1658) of 14 December 2005, which clarifies and develops the policy of the Commission in asking the Court of Justice to impose a periodic payment and a lump sum on a Member State which fails to comply with the judgment of the Court;
33. Asks the Commission formally to specify that, in accordance with its Communication on the Application of Article 228 of the EC Treaty, all cases already subject to letters of formal notice and reasoned opinions under Article 228, as well as cases currently subject to Article 226 proceedings, will be subject to the new policy (if not resolved before referral to the Court);
34. Recalls that petitions forwarded by individuals to the Commission, to the European Ombudsman and to the relevant parliamentary committees should encourage the European Institutions to assess the way in which Community law is being implemented at national and European level;

35. Reiterates its belief that close cooperation and monitoring arrangements between the Commission, the Council, the European Ombudsman and the relevant parliamentary committees are essential to ensure effective intervention in all cases where the petitioner has justifiably complained of an infringement of Community law;
36. Insists that, in its future annual reports, the Commission must present data that accurately reflect the important and distinct contribution made by petitions to the monitoring of the application of Community law and reiterates the request made in its resolution of 9 March 2004 for the inclusion of a chapter devoted exclusively to petitions;
37. Considers it necessary for the procedural rights of petitioners to be defined in a similar way to the rights of complainants, which were set out in the Commission's Communication on relations with complainants (COM(2002)141 final); considers that procedural questions related to the parallel treatment of complaints and petitions need to be clarified and that coordination between the services concerned must be further improved so that the Committee on Petitions can ensure that the rights of petitioners are respected;
38. Notes from its experience that it is difficult for citizens petitioning Parliament to invoke rights derived from EU law before national courts and to obtain reparation for loss or damage sustained on account of breaches of Community law by Member States;
39. Deplores the Commission's unwillingness to investigate alleged violations of Community law that lie in the past and have since been remedied, such as those raised in the "Equitable Life" and "Lloyds of London" petitions; urges the Commission to investigate such cases when the alleged failures are said to have caused significant damage to individuals, since the outcome of such investigations could be immensely helpful to citizens in obtaining compensation through the appropriate legal channels;
40. Calls for increased cooperation between national parliaments and the European Parliament and their respective parliamentarians, so as to promote and increase effective scrutiny of European matters at national level; considers that parliaments have a valuable role to play in the monitoring of the application of Community law, thus helping to strengthen the democratic legitimacy of the Union and bring it closer to the citizens;
41. Urges the Commission to send its annual reports on monitoring the application of Community law to the national parliaments, so that they are better able to monitor such application by the national authorities;
42. Instructs its President to forward this resolution to the Commission, the Council, the Court of Justice, the European Ombudsman, and the parliaments of the Member States.

EXPLANATORY STATEMENT

Introduction: this report within the framework of better regulation

This report intends to evaluate the Commission's monitoring of the application of Community law in 2003 in the framework of the present debate on better law-making, trying also to use, where possible, some more recent information and to examine the follow-up of previous similar reports, notably the last one drafted by Mme Wallis. This report will also make some reference to the 2004 report published by the Commission in January 2006.

The origins of the EU's 'better regulation' agenda lie in two key initiatives. The first was a Commission White Paper issued by the former Prodi Commission in 2001 on *'European Governance'*¹. This aimed to improve EU policies by strengthening their transparency, coherence, effectiveness and efficiency, while at the same time boosting public participation and accountability in the process of their development.

The second was the so-called 'Lisbon Strategy'. Launched by the EU's Member States in March 2000 at the European Council in Lisbon, it aimed to make the EU the most competitive, knowledge-based economy in the world by 2010, and introduced a number of new mechanisms for policy development aimed at achieving this. The following year, reflecting the Treaty commitment to sustainable development, an environmental dimension was added to the Lisbon Strategy by EU leaders at their meeting in Gothenburg in June 2001.

The Commission has also decided that better regulation needs to be integrated into the process of policy-making and that new legislative proposals presented by the Commission must seek to promote better regulation and contribute to competitiveness. In this context, in the Interinstitutional Agreement on better law-making of 16 December 2003, the EU institutions insisted on the importance of simplifying and reducing the volume of EU legislation.

In accordance with the Inter-institutional Agreement, in its Communication of 16 March 2005², the Commission declared its intention "**to screen** proposals that are pending before the Council/Parliament with regard to their general relevance, their impact on competitiveness and other effects". In the recent Communication of September 2005 on the "Outcome of the screening of legislative proposals pending before the Legislator", the Commission illustrates the objectives, process and outcomes of this screening exercise.

In the public debate, and following a tendency present in the Member States and partially in the EP, the Commission repeatedly declared that its new approach is to reduce the volume of legislation and to get rid of ineffective legislative acts. In this context, there is a certain concern that the meaning of 'better regulation' will become increasingly narrower and could be simply interpreted as de-regulation and used as an excuse for those seeking to roll back social and environmental protection measures. The quality of regulation should be first and foremost determined by informed and vigorous political debate and by its capacity to fulfil the

¹ COM (2001)0428

² COM (2005)0097

objectives for which it was drafted in the first place. If the Commission and the Council use the tools of the 'better regulation' as an excuse to avoid, prevent, or bypass that political debate to the benefit of corporate interests or in order to diminish Member states obligations at EU level, the initiative will do precious little to reassure Europe's citizens¹.

On the other hand, after enlargement, a reduction in the amount of legislation produced must be compensated by placing a larger emphasis on implementation. The most obvious result of an analysis of the 21st Report of the Commission is that a relevant amount of **resources attributed to the drafting and follow up of legislation should be now dedicated to the effective and correct transposition and implementation of existing European legislation** in the different competent units dealing with the infringement cases.

In accordance with Article 211 of the Treaty, it is the task of the Commission to ensure that Member States observe and implement Community law properly. In particular, the procedure set out in article 226 of the EC Treaty gives the Commission a significant power to **bring enforcement proceedings against Member States** which it considers to be in breach of their obligations under Community law. It is worth noting that Article 226 does not, as the Commission intimates in the very first paragraph of its 21st Report, limit this power to rules 'which are contrary to the fundamental principles of Community law as enshrined in the Treaties'; **Article 226 empowers the Commission to take action against Member States for any failure to fulfil their obligations under the Treaty**².

The Commission initiates the enforcement proceedings either in response to a complaint from "a complainant" within the Member State, or on its own initiative (information gained for example through the press, European Parliament questions, etc). In an enlarged EU the fact that laws are correctly and visibly implemented is essential to give a meaning to the whole European project. This is not only a matter of legal obligation, but also a question of political responsibility. If EU laws are not perceived to be mandatory for all and if their transposition and implementation depend on the good will of this or that government or rely on different interpretations, we will soon have a situation of objective re-nationalisation of EU policies with obvious negative effects on the internal market and on the whole "acquis communautaire". As we will see later in this report, the situation is already quite worrying, above all in the environment and the internal market sectors, where the length and weakness of the punishment of the current infraction procedures threaten to cancel out any real deterrent effect of the sanction.

It is the Committee's opinion that the Commission needs to give serious, visible consideration and a new priority to the question of implementation control, especially considering the emphasis given lately to the alleged urgency of diminishing the amount of legislative

¹ See Institute for European Environmental Policy "For Better or for Worse? The EU's 'Better Regulation' s Agenda and the Environment", November 2005

² Article 226 of the Treaty provides for a procedure in cases where the Commission considers that a Member State has failed to fulfil an obligation under Community law, whereby the Commission writes a "*letter of formal notice*" to the Member State allegedly committing the infringement concerned, giving it the opportunity to submit its observations. After that, the Commission delivers a "*reasoned opinion*". If the Member State still refuses to comply, the Commission may bring the matter before the Court of Justice. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Treaty and the Member State fails to take the necessary measures to comply with the Court's judgement within the time limit, *proceedings* can be commenced according to article 228. The Commission may bring the case before the Court of Justice specifying the amount of the lump sum or penalty payment to be paid by the Member State.

initiatives. Despite the decreasing resources available, it is important that the emphasis given in the Governance Papers in 2001 to the cooperation with Member States should be re-evaluated in light of the fact that most Member States are not ready to do much to this effect. This was patently confirmed during the negotiations on the last Better Regulation Inter-institutional agreement in 2003, when Council refused any commitment in matters concerning transposition and implementation. It is also the opinion of the Committee on Legal Affairs that the EP has an important role to play in this respect, both to support and stimulate the Commission, without of course intruding in its exclusive prerogatives. This will certainly require from our side that we partly shift our attention from the legislative field to implementation control as well. And in the framework of a new dialogue with Commission and Council on Better Regulation, we will have to try once again to convince the Council to take some responsibility in this respect.

The 21st report on monitoring the application of community law

The 21st report from the Commission on monitoring the application of Community law gives an account of the Commission's activities in connection with monitoring the application of Community law in 2003.

Monitoring the application of Community law mainly consists of:

- 1) verifying if Member States have adopted implementing national measures and communicate them to the Commission within the prescribed time limit;
- 2) verifying the conformity of national transposition measures with Community legislation;
- 3) ensuring the actual respect of the provisions by private and public entities, bodies and authorities (**enforcement**).

1) Adoption and communication of national implementing measures

The number of **proceedings for failure to adopt and communicate** national implementing measures has almost doubled compared to the figures of 2001 and 2002. The statistics for 2003 show an increase of 92.1% from the previous year, from 607 cases to 1,166. The failure to notify seems, moreover, a **consistent** practice among Member States: whereas other areas of failure to fulfil obligations show enormous differences in the behaviour of Member States, the failure to notify transposition measures (and draft technical regulations under Directive 98/34/EC) is shared almost equally.

It is embarrassing that a lot of Commission's time and effort still has to go into the business of soliciting Member States **to simply adopt and communicate national measures**. Very often, a basic letter of formal notice is not sufficient to settle the matter: the Court of Justice has to intervene to render judgment in almost 10% of all cases of non-notification that are opened.

It is clear that Member States carry a large part of the responsibility for this situation. This should not be considered a minor question or detail, above all because after enlargement, the situation is certainly not going to improve if no political priority is given to this. It is also clear, however, that the spectacular increase in notification failure questions the whole system and the efficiency of the controls in place. If we cannot even get Member States to send notifications of their transposition measures, how much faith can we expect Europe's citizens

to have in the Commission's, and also the Council's and EP's, effectiveness in upholding their substantive Community law rights?

2) Transposition period and conformity checking

The European Parliament has repeatedly expressed concern about the poor records of Member States in transposing internal market Directives correctly and on time. The Inter-institutional Agreement on better law-making of 16 December 2003 also emphasised the need for Member States to comply with Article 10 of the Treaty¹ and called upon Member States to ensure that Community law is properly and promptly transposed into national law within the prescribed deadlines. Despite these calls and the fact that timely and correct transposition is a legal obligation, very often the transposition period expires before Member States start adopting implementation measures.

Conformity checking is currently often carried out long after the Member States have notified the Commission of the transposing national legislation. Conformity checking should be made a priority in practice. It should be finalised as soon as possible following the receipt of the notification of national measures.

In this context, the Commission has outsourced specific studies in order to check the conformity of national legislation with European directives. The Committee on Legal Affairs is convinced of the importance of these studies in order for the European institutions to have an objective idea of the state of transposition of crucial directives and thinks that the publication of all these studies will represent a sign of effective transparency from the Commission.

In this context, additional human and financial resources should be made available to the Commissions' services dealing with the checking of conformity of national legislation, which should use the studies the Commission has outsourced as an important piece of information.

Furthermore, in order to facilitate the conformity checking of national legislation, directives should systematically require Member States to provide, accompanying the notification of transposing legislation, a table indicating in detail which articles of the Directive have been transposed and by which provisions of national law (concordance table). In the meantime, when drafting and negotiating a new Directive, the European institutions should guarantee the systematic inclusion in each new Directive of the concordance table with the communication of transposition measures (at national and/or regional and local level). It often happens (especially for internal market legislation), that member states simply send their act of transposition, without giving any guide on how to find and evaluate the quality of transposition and sometimes without any consultation with the Commission on the correct interpretation of the law. A recent example is the transposition of the Directive on public tendering in Italy, which has been transposed in a code of more than 250 articles, without any dialogue with the Commission.

¹ Article 10 of the Treaty requires Member States to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

The Commission is of course well aware of this situation and some important progress has been made in this respect since 2003. Of the 117 directives proposed in 2004, 49 included the provision for a concordance table (41.8%). Of the 93 directives adopted in 2005, 58 included the provision of a 'concordance table' (62.3%). Still, there is as yet no consistent practice of concordance tables being adopted in final legislation in all cases, and above all there is a lot to do to get Member States to actually prepare a concordance table and send it to the Commission, above all for those directives and measures for which they would be most useful.

In the already mentioned Commission Communication "Better monitoring of the application of Community Law", the Commission denounced the administrative and organisational obstacles it still encounters when dealing with national authorities. As an example, it seems that it is still particularly complex to identify the appropriate contact(s) with whom to liaise when checking the conformity of the transposition measures. As suggested in the Communication, the setting up of **appropriate coordination points in each Member State** could provide the Commission with a single point of contact for questions concerning transposition, for the application of Community law and for coordination with national ministries and regional or local authorities¹. In response to the Commission's suggestion, some of the Member States have already successfully set up a central monitoring body at governmental level to coordinate for the whole transposition policy. This seems to be the case in Malta, Poland, Portugal, Ireland and Belgium. Estonia, Slovakia, Czech Republic, Malta, Poland, Hungary, and France have also designated a Ministry responsible for each directive².

The Commission's efforts to improve its implementation policy by focusing on the need to ensure the coordination among different competent authorities at national level are certainly to be welcomed. . An emphasis on organizational issues and communication flows should not, however, hide the fact that many instances of incorrect **implementation are the result of conscious efforts by Member States to undermine Community legislation for political and economic reasons**. Again, this seems especially true for the environmental field. A clear example are the 11 cases of non-conformity of the Italian legislation on waste as well as the 4 on impact assessment, as stated in the latest Sixth Annual Survey on the implementation and enforcement of Community environmental law of 2004³. This is quite a unique situation, since other member states have at most one or two non-conformity problems in this field and the majority have none.

Even more clearly than for non-notification cases, the issue of non-conformity is a clear demonstration that bad application of EU legislation could progressively lead to EU law "à

¹ In this context, in its Recommendation of 12 July 2004 on best Transposition Practices to assist Member States in their efforts to improve their transposition, the Commission has strongly recommended that the Member States " take the steps, *organisational* or otherwise, that are necessary to deal promptly and effectively with the underlying causes of their persistent breaches of their legal obligation to transpose internal market Directives correctly and on time".

² As a follow up to the Recommendation of 12 July 2004, in May 2005 Commissioner McCreevy invited Member States to inform the Commission of the main results of their internal screening exercise. The Commission has received 21 responses from the Member States. Member States which have not replied are Italy, The Netherlands, Greece and Austria, two of them (Greece, Italy) among those with the highest deficit in transposition. This information refers to the responses received by the Commission and informally communicated to the Parliament.

³ SEC(2005) 1055

géométrie variable” and “à la tête du client” , with negative consequences for the certainty of the law and in the long term for the credibility of the EU. And again, there is a clear contradiction between the principles underlying the rule of law and a certain practice of indulgence and negotiation engendered by the Commission through its use of Article 226 EC. Once again, EU institutions need to focus altogether on this question, and to make of it a priority issue in the whole “better lawmaking” exercise. As with notification, in the case of non conformity, the Commission should also be able to act quickly and Member States should be sufficiently motivated to adjust the situation before it goes to Court.

Several options could be examined, from a “name and shame list” to be regularly discussed in the competent committee in the EP, to regular special sessions to be held with representatives of the Member States. But in order to do all this, it is very important that the Commission decides to go public on these issues and to accelerate both the checking process and the reaction towards Member States who do not fulfil their obligations. As we will also see in the law enforcement chapter, conformity questions are difficult to track, some remain mysteriously hidden in the offices of the Commission before a "complaint" of a citizen obliges the Commission to act.

3) Enforcement

The enforcement of EC law is carried out in the Member States. It involves the actual respect of the provisions by private and public entities, bodies and authorities. Article 226 and 228 of the Treaty provide for a procedure in cases where the Commission considers that a Member State has failed to fulfil an obligation under Community law.

It is very important to mention the fact that for countless citizens, associations, local authorities and companies the possibility of a direct complaint to the Commission represents an irreplaceable instrument for forming a consciousness of belonging to a community of law that goes beyond their State; not only because - contrary to most judicial cases- a complaint to the Commission does not cost anything, but also because in many cases there is no other way to force a Member State to comply with EU law.

This is another reason why, in a moment of serious doubts about the capability of the EU to listen to its citizens, the ability to ensure the implementation of important pieces of legislation, notably concerning internal market, consumer rights, health and environment, could represent a way to regain citizens’ confidence that should be given the utmost priority by EU institutions.

According to the 21st report, 3,927 infringement cases were ongoing on 31.12.2003. Among these were: 1,855 cases for which proceedings have commenced, 999 cases for which a reasoned opinion has been sent, 411 cases which have been referred to the Court of Justice and only **69 cases for which Article 228 proceedings have begun**. Of these 69 cases, **40** concern the **environmental sector**.

The Report refers *inter alia* to an increase in the total volume of infringement cases initiated by the Commission of 15% (from 2,356 in 2002, to 2709 in 2003). The number of cases initiated by the Commission on the basis of *its own investigations* decreased in 2003, dropping from 318 in 2002 to 253 in 2003, a decrease of 20.44%. **Complaints** still form the

bulk of infringement procedures (1290 in 2003) and concerned above all once again the **environmental sector** (493 complaints) and the internal market sector (314 complaints).

A brief analysis of the 2004 Report shows that the figures for 2003 and 2004 reflect a position not substantially different from previous years. 3541 infringement cases were in motion on 31.12.2002.

This is a useful table to compare the situation in the past ten years.

Year	Infringements detected	Complaints	Own initiative cases	Non-communication cases
1996	2155 of which	819	257	1079
1997	1978 of which	957	261	760
1998	2134 of which	1128	396	610
1999	2270 of which	1305	288	677
2000	2434 of which	1225	313	896
2001	2179 of which	1300	272	607
2002	2356 of which	1431	318	607
2003	2709 of which	1290	253	1166
2004 (EU-15)	2146 of which	1080	285	781
2004 (EU-25)	2993 of which	1146	328	1519

The 21st Report mentions the fact that “Over the years the Commission has tried constantly to develop the pre-litigation phase which precedes the referral to the Court of Justice. In particular, the Commission has made a lot of the role of individual complainants in ‘making the rule of law a tangible reality for Europe’s citizens’”.

That laudable language, however, cannot disguise the fact that the Article 226 EC procedure **gives citizens no rights whatsoever beyond lodging the complaint**, and gives the **Commission a very large discretion** in deciding to take the case further or not. The Court of Justice has, moreover, emphasised the political nature of the procedure repeatedly, by refusing to grant citizens any means of judicial redress against action (or non-action) by the Commission. In the absence of judicial review, in an unsatisfactory context in terms of all aspects of implementation of EU law and of limited resources of the Commission, it is worth considering how to develop a more **transparent approach and a more structured access for the European Parliament to the Commission's decisions**, without interfering into the discretionary power the Commission has in deciding how to deal with specific infringement cases.

The EP already plays a role in the infringement procedure because often procedures brought by citizens are also the object of Parliamentary questions; moreover, the ENVI committee

introduced in the course of the past legislature a regular session on implementation, which allows it to follow closely a certain number of concrete cases. Other committees are considering doing the same.

Yet this is as far as we can go. If it is decided in the Community legal order that Article 226 EC is essentially a political procedure- granting powers but not legal obligations to the Commission, then **political control** over the 'guardian of the Treaties' on behalf of Europe's citizens should be exercised by the Parliament (be it the MEP concerned or the competent committee or specific instruments of inter-institutional dialogue to be established) or by interested parties themselves. Discretion may be a necessary evil in modern government; **absolute discretion coupled with an absolute lack of transparency, however, is fundamentally contrary to the rule of law.**

The Committee on Legal Affairs is convinced that more openness and transparency would be in the interest not only of EU citizens but also of the Commission and its credibility.

In the recently adopted communication on "Better Monitoring of the application of Community law", as announced in its White Paper on Governance, the Commission respected its commitment to conduct surveillance and to bring proceedings against infringements effectively and fairly by defining and applying **priority criteria** reflecting the seriousness of the potential or known failure to comply with the legislation.

The priority criteria can be summarised as follows:

- (a) *Infringements that undermine the foundations of the rule of law*
- (b) *Infringements that undermine the smooth functioning of the Community legal system*
- (c) *Infringements consisting in the failure to transpose or the incorrect transposition of directives.*

The Committee considers the identification of the priority criteria a positive attempt of the Commission to follow a more transparent approach when dealing with infringement procedures.

Nevertheless, despite the fact that the Commission has expressly declared that "*the application of the priority criteria will be assessed annually, when the report on the monitoring of the application of Community law is discussed*", in the 21st report there is no reference to any specific assessments made by the Commission on the application of these criteria. The Committee is also concerned that the identification of priority criteria might be a way to reduce excessively the scope of the infringement procedures; it would be important that the Commission evaluates if a simple strengthening of the available resources in the most exposed DG would not be a preferable solution in order to improve the capability of the complaints' follow-up. The European Parliament should be kept informed on the results of such evaluations and be consulted on any possible change on the content of the priority criteria. In this context, the Commission should always place the fundamentals of the rule of law and citizens' experience above purely economic criteria and evaluations and should monitor carefully the respect of the fundamental freedoms and general principles of the Treaty as well as of regulations and framework directives.

As for the (c) priority criteria, the Committee is convinced of the importance of making the conformity checking an important issue, without any of course of the case-by-case application of EU legislation. In this context, additional human and financial resources should be made available to the Commissions' services dealing both with the checking of conformity of national legislation and bad application.

In this context, it is the Committee's opinion that, as confirmed by the leading cases of European Court of Justice¹, EU citizens should also derive benefits from the direct application of the Treaty, especially as regards the fundamental freedoms. More specifically, in its rulings dealing with health-care services, the ECJ has indicated that patients can benefit from non-hospital care in any other Member State of the EU and be reimbursed by their Member State of affiliation without prior authorisation being required. Reimbursement will be made at the level which would have been granted for the same treatment in the Member State of affiliation of the patient.

Several consumers' associations claim that they receive complaints from citizens on a daily basis. In its "Report on the application of Internal market rules to health services" (SEC (2003) 900, the Commission indicates that the vast majority of Member States are reluctant to comply with this case-law. This results in complete legal uncertainty, with the result that patients are deprived of their right to reimbursement under the conditions established by the ECJ. It is time for the Commission as Guardian of the Treaty to act for the sake of individual EU citizens, in particular as patients are among the most vulnerable of citizens. It is the Commission's duty to launch infringement proceedings in a systematic and determined way against Member States. This is crucial in order to ensure that EU citizens irrespective of their Member State of origin may effectively exercise rights confirmed on many occasions by the ECJ. It should be remembered that the degree of commitment of citizens to European integration depends directly on their personal experience of the EU.

Despite the declared existence of the above mentioned criteria, the Commission's discretion in deciding to send a letter of formal notice, to follow up with a reasoned opinion and even to refer the case to the Court of Justice is in practice absolute and transparency almost inexistent.

Each case which starts in response to **a complaint** has no predictable timetable. Despite the Commission's efforts to show transparency vis-à-vis the complainant, there is no guarantee of the timing and the effectiveness of its activity.

The Commission has, moreover, the discretion to **forgive** Member States' lack of cooperation in resolving a case, to shrug off late submissions of observations, and even to indulge Member States' lengthy quests for a competent responsible official to deal with the matter in the first place. Even if some measure of discretion on the substance can be useful in certain circumstances to facilitate the smooth working of the Community legal order, the Commission should at the very least establish **firm rules** on the automatic referral to the

¹ Case C-158/96 Kohll [1998] ECR I-1931; Case C-120/95 Decker [1998] ECR I-1831; Case C-157/99 Smits and Peerbooms [2001] ECR I-5473; Case C-368/99 Vanbraekel and Others [2001] ECR I-5363; Case C-385/99 Müller-Fauré and van Riet [2003] ECR I-4509; Case C-56/01 Inizan [2003] ECR I-12403; Case C-8/02 Leichtle [2004] ECR I-2641. The Advocate General presented his opinion in Case C-372/04 Watts on 15 December 2005 and the Court should give judgement in the coming weeks.

Court of Justice of cases where Member States are unwilling or unable to enter into meaningful discussion within the prescribed deadlines in the pre-litigation phases.

According to the Commission communication on the relations with the complainant in respect of infringements of Community law, "any correspondence which is likely to be investigated as a complaint shall be recorded in the central registry of complainants" with the only exception of the complaints which responds to one of the 6 criteria precisely defined and listed in the communication.

Despite the existence of this essential principle, some evidence has emerged on the extremely worrying cases of the Commission of **non-registration of the complaints** sent by citizens with the assumption that citizens should refer to the means of redress at their national level before referring their cases to the European Commission or that there are other similar cases already under examination. The European Ombudsman has in this context recently received specific complaints denouncing the non-registration of the complaints and he is currently investigating.

It is the Committee on Legal Affairs' opinion that the EP should be able to account if the above mentioned principle is correctly applied by the Commission.

Equally, at the moment there is no access for the complainant to the exchange of letters concerning infringement cases between member states and the Commission. The official reason for this is that the infringement procedure is a "pre-judicial" one and therefore should be covered by certain confidentiality. This is not a sustainable situation. Indeed, the Commission often does not have the means or the will to check if what Member States say is really true and refuses to intervene on the substance, preferring to stay on the level of the formal legality of the action of the state by trusting what it says. Instead, once confirmed according to clear criteria that a specific complaint is justified, better access for the complainant to the substance of the result of negotiations between Member States and the Commission (overcoming in part the limits imposed by Regulation 1049/2001 of 30 May 2001) would certainly increase the efficiency and the transparency of the procedure and would represent a powerful motivation for the Member State to respect the rules of the game.

If the infringement procedure remains secretive and the real reasons for the decisions are not made public, apart from an often very generic letter, there is much more space for undue pressures on the Commission by national authorities or other interest groups. It is of course acceptable and even desirable that Commission and Member States enter into negotiations in order to resolve a contentious matter before it goes to Court. But often the terms of such negotiations remain dubious and their implementation difficult to check. We know that this is a very controversial issue and it is possible that Council will never accept any transparency in this matter. But there are a lot of "middle-way" measures that could be envisaged. For example, when the Commission sends a complainant a letter announcing the decision to file the complaint because the Member State was able to convince it of the legality of its action, it would be important that the reasons are made much more clear and explicit. In some cases it is already possible for the complainant or the MP involved in the case through a parliamentary question, to present further observations; but this is quite difficult if he/she is not aware of what precisely the Member State agreed with the Commission.

Of course, this situation is sometimes due to the fact that the legislation to be applied leaves many “holes” and a large space for interpretation. Therefore, it would be perhaps interesting if the Commission tells us the pieces of legislation which are most often violated and whose implementation is most difficult in order to establish a sort of list of legislation to be reviewed and clarified.

It is the Committee's conviction that if the infringement policy should be made a political priority, then additional human and financial resources should be made available to the Commissions' services dealing with infringement, especially in the internal market and environmental sectors, where the highest number of complaints are registered. Of course, not all Directorates General deal with infringement in the same way and this is both understandable and welcome. As an example, there is a separate Infringement Unit within the ENVI Directorate General that plays an essential role of centralisation and coordination of the whole implementation policy in the environmental sector, since very often different directives are concerned in a single procedure, whereas in the Internal Market there is no separate Unit dealing with infringement. In both cases though, more effort should be put into strengthening the capability to answer complaints. For example, it is difficult to understand how for the 10 new Member States there is only a total of 2 staff members in the DG Environment infringement unit.

The Committee's rapporteur has specifically asked for information and data on the resources allocated for the implementation policy. The Secretariat General informed that "it is currently in the middle of an internal review of resources allocated among the main directorates General to dealing with all aspects of the application of Community law"; of course it is difficult to understand why this prevented the rapporteur from obtaining data on the CURRENT situation, but is confident to get them on time for the final version of the report.

It is the Committee's opinion that the Parliament should receive a specific detailed plan on how the resources are planned to be distributed within the Secretariat General and the competent directorates general, which will give the Parliament a clearer idea on how the Commission intend to give priority to the implementation policy.

It would be interesting in this context to make an evaluation of the cost and benefits that the work of the people responsible of handling the infringement cases brings in solving or correct cases of bad application of Community law.

According to its internal rules, the Commission organizes four yearly meetings to decide on infringements procedures cases. In this context, all decisions, from the first letter of formal notice, aimed at getting information from MS, to the decision to go to Court are taken by the College of Commissioners. It is the Committee on Legal Affairs' proposal to partially shorten the time of the internal procedure, by empowering each Member of the Commission responsible for the field concerned, to directly send letters of formal notice to the Member States when they have not correctly transposed Community law into their national legislation.

Application of Article 228 of the EC Treaty

The possibility of imposing financial sanctions on a Member State that has failed to implement a judgment establishing an infringement was introduced by the Maastricht Treaty, amending former Article 171, now Article 228 of the EC Treaty.

Since the entry force of the Maastricht Treaty, the article 228 procedure led to judgements by the ECJ only in three cases (Case C-387/97 Commission v Greece of 4 July 2000; Case C-278/01 Commission v Spain of 25 November 2003; Case C-304/02 Commission v France of 12 July 2005).

Even if “money makes the world go round” and although the perspective of paying a sanction could represent indeed a powerful means of pressure on Member States, evidence shows that Art. 228 TEC is not used to its full potential; the procedure remains long and cumbersome.

As an example, the very first case (the Greek one) is very indicative of how the system is not really able to deliver. Thirteen years passed before the whole cycle of the infringement procedure ended with a penalty payment.

In 1987 the Commission received a complaint from several municipalities about uncontrolled waste disposal in the river Kouroupitos. Five years later, the Court of Justice held in a first judgment that Greece was contravening two EU laws by failing to deal with the toxic and dangerous waste. The Commission reminded Greece to comply with the judgment in 1993, and initiated a fresh procedure at the end of 1995, yet Greece continued to do nothing.

In 1997 the Commission applied to the Court for an order requiring Greece to pay 24,600 euros per day of delay from the delivery of the new judgment. Thirteen years after the original complaint, the Court found in July 2000 that waste is still thrown in an uncontrolled manner in the river and finally condemned Greece with a penalty payment of 20.000 euros for each day of delay in complying with the 1992 judgment. This is certainly not an isolated case.

In December 2005, and for the first time, the European Commission has even decided not to impose a fine on Spain that had already been authorized by the European Court of Justice for breaches of the EU Bathing Water, the reason being that Spain simply partially "improved" its compliance rates with the mandatory water quality standards.

The Commission started the infringement procedure on this specific case in 1988. The European Court of Justice in 1998 found Spain guilty of violating the water quality standards of the Bathing Water Directive at inland beaches. When Spain failed to act to bring these waters up to the EU standards, the Commission took it to Court again and won a second judgment in November 2003. This time the Court used its powers to impose a fine on Spain for failing to heed its first judgement.

The Court ruled that the penalty should be levied annually for each 1% of inshore Spanish bathing areas found not to comply with the directive's purity standards. The Court directed that the fine should apply from the 2004 bathing season until Spain complied with its judgement.

In order to limit in the future other similar unacceptable decisions by the Commission to suspend fines already authorized by the Court, the Committee on Legal Affairs is pleased with the recent Commission's Communication on the "Application of article 228 of the EC Treaty"¹ of 14 December 2005, which clarifies and develops the policy of the Commission in asking the European Court of Justice to impose a periodic payment and a lump sum on a Member State which fails to comply with a judgment of the ECJ. This clarification was required after the ruling of the ECJ on 12 July 2005 in case C-304/02, Commission vs French Republic.

The very first consequence of the new approach stated in this Communication concerning the lump sum payment is that "in cases where a Member State rectifies the infringement after the Court is seized and before the judgment delivered under Article 228, the Commission will no longer withdraw its action for that reason alone. The Court of Justice, which cannot take a decision to impose a penalty payment because such decision has lost its purpose, can nevertheless impose a lump sum payment penalising the duration of the infringement up to the time the situation was rectified, because this aspect of the case has not lost its purpose. The Commission will endeavour to inform the Court without delay whenever a Member State terminates an infringement, at whatever stage in the judicial process. It will do the same when, following a judgment delivered under Article 228, a Member State rectifies the situation and the obligation to pay a penalty thus comes to an end".

The Committee on Legal Affairs would like to have confirmation from the Commission that all cases already subject to letters of formal notice and reasoned opinions under Article 228, and cases currently subject to Article 226 proceedings, will be subject to the new policy exposed in the above mentioned Communication (if not solved before referral to the Court).

¹ SEC (2005)1658

28.2.2006

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Legal Affairs

on the Commission's 21st and 22nd annual reports on monitoring the application of
Community law (2003 and 2004)
(2005/2150(INI))

Draftswoman: Diana Wallis

CONCLUSIONS

The Committee on Petitions calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

- A. whereas the effectiveness of EU policies is largely determined by their implementation at national, regional and local levels; whereas compliance with Community legislation by the Member States must be rigorously controlled and monitored in order to ensure that it has the desired positive effects on the daily lives of citizens,
- B. whereas the latest annual report provides an overview of the Commission's work in this respect and gives an account of the current state of compliance with Community law in different Member States and policy sectors, indicating a significant increase in the number of infringement cases brought by the Commission in 2003 compared to previous years; whereas the vast majority of those cases concern the area of environmental law, followed by internal market legislation,
- C. whereas certain pieces of legislation such as the directives on migrant workers, recognition of diplomas, environmental impact assessment and nature protection have, in particular, given rise to recurring implementation problems, as the substantial number of petitions on those subjects illustrates,
- D. whereas EU citizens make extensive use of their right enshrined in the Treaty to petition Parliament, drawing alleged infringements of Community legislation to the attention of the institutions; whereas petitioners constitute a valuable source of information on how Community legislation works in reality; whereas the facts and evidence gathered by the Committee on Petitions in the course of its examination of petitions can be of particular relevance for detecting infringements,

- E. whereas the parallel existence of complaints and petitions as well as the involvement of two institutions in the latter procedure gives rise to certain problems with regard to ensuring that the petitioners' procedural rights are fully respected,
- F. whereas the Commission enjoys discretionary powers in assessing complaints and petitions and in deciding whether or not to commence infringement proceedings and to refer a case to the Court of Justice, whilst Parliament has the duty to exercise control over the Commission's activities so as to ensure that it fulfils its obligations as guardian of the EC Treaty under Article 211 thereof,
- G. whereas the European Ombudsman has considered (in the Decision on complaint 995/98/OV) that the Commission's discretionary powers in respect to the conduct of infringement procedures are "subject to legal limits as established by the case law of the Court of Justice which requires, for example, that administrative authorities should act consistently and in good faith, avoid discrimination, comply with the principles of proportionality, equality and legitimate expectations and respect human rights and fundamental freedoms",
- H. whereas, if citizens are to enjoy full protection of their rights and freedoms conferred by Community law, the EU legal order must provide for a complete system of effective legal remedies for potential violations of those rights,

Implementation deficits and the need for clear legislation

- 1. Welcomes the Commission's 2003 report on monitoring the application of Community law but regrets the fact that, as at December 2005, the Commission had still not published a report covering the year 2004;
- 2. Is concerned about the persistent implementation deficits in general and with regard to certain directives in particular; considers that these may, in part, be caused by overly complex, unclear or imprecise provisions and therefore welcomes the Commission's latest initiatives to assist Member States in the transposition and implementation of particularly complicated directives through guidelines and interpretative texts;
- 3. Considers it essential for legislation to be drafted in a way that is more enforcement-friendly; considers it equally important to improve citizens' understanding of EU legislation and therefore proposes to include a citizen's summary in the form of a non-legalistic explanatory statement accompanying all legislative acts;
- 4. Calls for the introduction into the Treaty of a European Citizens' Initiative as a proactive counterpart to the essentially reactive right to petition, since this would make EU laws more acceptable to citizens and therefore likely to be better implemented and respected;

Implementation of Community law and petitions

- 5. Strongly disapproves of the fact that the Commission's report fails to recognise the

important role played by the petitions process in detecting infringements of Community law; in this respect, regards the statistics annexed to the report, which show the origin of infringements, as grossly misleading, since the total number of complaints made to the Commission is compared merely with the number of petitions that actually lead to the opening of an infringement procedure;

6. Insists that, in its future annual reports, the Commission must present data that accurately reflect the important and distinct contribution made by petitions to the monitoring of the application of Community law and reiterates the request made in its resolution of 9 March 2004 for the inclusion of a chapter devoted exclusively to petitions;
7. Considers it necessary for the procedural rights of petitioners to be defined in a similar way to the rights of complainants, which were set out in the Commission's Communication on relations with complainants (COM(2002)141 final); considers that procedural questions related to the parallel treatment of complaints and petitions need to be clarified and that coordination between the services concerned must be further improved so that the Committee on Petitions can ensure that the rights of petitioners are respected;

The Commission's handling of infringement cases and the need for parliamentary control

8. Notes that the Committee on Petitions has repeatedly been confronted with situations in which the Commission decided not to investigate, or to close, cases raised by petitioners but failed to provide satisfactory reasons for its decision; stresses that the Commission's discretion with regard to infringements does not relieve it from the duty to duly explain its decisions to Parliament;
9. Requests the Commission to take its decisions on infringement cases in the most transparent way possible and to keep complainants and petitioners fully informed about the factual basis on which those decisions are taken; takes the view that the Commission should disclose correspondence exchanged with Member States in the course of its investigations, so that decisions on infringement proceedings can be rendered subject to scrutiny;
10. Is concerned about the lack of rigour on the part of the Commission in pursuing potential infringements of directives, in particular concerning nature protection and environmental impact assessment, and calls on the Commission to bring proceedings before the Court of Justice whenever there is reasonable evidence of a breach of Community law;
11. Recalls that, pursuant to Article 6(1) TEU, the Union is founded on the principle of the rule of law and considers that it follows from this principle that the Union's institutions in their executive and administrative capacities, including the Commission in the exercise of its powers to monitor the application of Community law, are bound by the general principles of Community law, as recognised by the Court of Justice;
12. Considers that the Treaty does not provide any means of redress if a national court

against whose decisions there is no judicial remedy under national law fails in its obligations under Article 234 EC, and considers, therefore, that the Commission must investigate with the utmost care allegations made in petitions and complaints of such refusals to request a preliminary ruling;

13. Considers that it would be legitimate for Parliament to take appropriate legal action if this is needed in order to bring to an end a serious infringement of Community law revealed in the course of examination of a petition, and where a significant difference of interpretation persists, despite efforts to resolve it, between Parliament and the Commission as regards the action required for the protection of citizens' rights in the case in question;

Citizens' right to redress

- 14.. Notes from its experience that it is difficult for citizens petitioning Parliament to invoke rights derived from EU law before national courts and to obtain reparation for loss or damage sustained on account of breaches of Community law by Member States;
15. Calls on the Commission, without prejudice to national institutional and procedural autonomy, to adopt a communication setting out its interpretation of the principle of State liability for breach of Community law, including infringements attributable to the judicial branch, thus enabling citizens to contribute more effectively to the application of Community law;
16. Deplores the Commission's unwillingness to investigate alleged violations of Community law that lie in the past and have since been remedied, such as those raised in the "Equitable Life" and "Lloyds of London" petitions; urges the Commission to investigate such cases when the alleged failures are said to have caused significant damage to individuals, since the outcome of such investigations could be immensely helpful to citizens in obtaining compensation through the appropriate legal channels;
17. Considers it necessary to examine ways of improving procedures at an inter-institutional level in order to provide more effective non-judicial means of redress for European citizens, as a corollary to the right of petition contained in the Treaty; suggests in this regard that consideration might be given to the provision of a "Solvit"-type organisation within the European Parliament whose function it would be to assist members with casework of a legal nature.

PROCEDURE

Title	Monitoring the application of Community law (2003 and 2004) - overall position - 21st and 22nd annual reports
Procedure number	2005/2150(INI)
Committee responsible	JURI
Opinion by Date announced in plenary	PETI 8.9.2005

Enhanced cooperation – date announced in plenary	No
Drafts(wo)man Date appointed	Diana Wallis 13.9.2005
Previous drafts(wo)man	
Discussed in committee	25.1.2006
Date adopted	25.2.2006
Result of final vote	+ : 10 - : 0 0 : 0
Members present for the final vote	Robert Atkins, Inés Ayala Sender, Marie-Hélène Descamps, Alexandra Dobolyi, David Hammerstein Mintz, Luis Herrero-Tejedor, Carlos José Iturgaiz Angulo, Manolis Mavrommatis, Marie Panayotopoulos-Cassiotou, Diana Wallis
Substitute(s) present for the final vote	
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	

PROCEDURE

Title	The Commission's 21st and 22nd Annual reports on monitoring the application of Community law (2003 and 2004)		
Procedure number	2005/2150(INI)		
Committee responsible Date authorisation announced in plenary	JURI 8.9.2005		
Committee(s) asked for opinion(s) Date announced in plenary	PETI 8.9.2005		
Not delivering opinion(s) Date of decision			
Enhanced cooperation Date announced in plenary	No		
Rapporteur(s) Date appointed	Monica Frassoni 20.6.2005		
Previous rapporteur(s)			
Discussed in committee	15.9.2005	16.1.2006	23.2.2006
Date adopted	21.3.2006		
Result of final vote	+ 20 - 0 0 0		
Members present for the final vote	Maria Berger, Rosa Díez González, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Alain Lipietz, Hans-Peter Mayer, Aloyzas Sakalas, Francesco Enrico Speroni, Gabriele Hildegard Stauner, Andrzej Jan Szejna, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Jean-Paul Gauzès, Marie Panayotopoulos-Cassiotou		
Substitute(s) under Rule 178(2) present for the final vote			
Date tabled	24.3.2006		
Comments (available in one language only)			